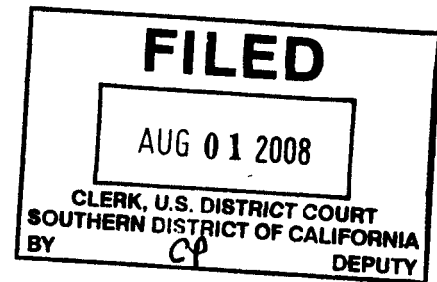


Rica C. Angelo, Pro Se
1970 Columbia St., #315
San Diego, CA 92101
(702) 396-1527



IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICA C. ANGELO,

Plaintiff,

vs.

COUNTRYWIDE BANK MORTGAGE
CORP.,

Defendant(s),

Case No.: /
08-CV-1253-W-JMA

**EMERGENCY REQUEST FOR
EX PARTE APPLICATION AND
SUPPORTING DECLARATION OF
RICA C. ANGELO FOR A STAY OR
TEMPORARY RESTRAINING ORDER**

NO HEARING DATE

**EMERGENCY EX PARTE APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING DECLARATION;
AND PROPOSED ORDER**

Plaintiff requests this Honorable Court for emergency relief from a wrongful foreclosure sale. A Temporary Restraining Order enjoining and restraining the Defendants from selling her home at a wrongful foreclosure sale set for on or about August 7, 2008 will maintain the status quo.

- 1 -

Angelo, EMERGENCY TRO REQUEST RE Columbia St.

CR

1 See Glider v PGA Tour Inc. 936 F. 2nd 417, 422 (9 Cir 1991).

2 Here it is undisputed that the defendant has not been identified
3 and demonstrated that they are the holder in due course.

4 A plaintiff may meet his/her burden by showing "either a
5 combination of probable success on the merits and the
6 possibility of irreparable injury; or serious questions as to
7 these matters and the balance of hardships tips sharply in the
8 plaintiffs favor" Department of Parks & Rec for the State of
9 California v. Bazaar Del Mundo Inc. 448 F. 3rd 1118, 1123 (9th Cir
10 2006). The court continued to note that the two "formulations
11 represent two points on a sliding scale in which the required
12 degree of irreparable harm increases as the probability of
13 success decreases" id at pg 1123-1124.

14 It is undeniable that defendants failed to demonstrate that
15 they are a holder in due course, failed to produce the original
16 wet ink signature on the original promissory note and the
17 original contract documentation. Defendant denied full
18 accountability for their responses to plaintiffs, and most
19 troubling defendants failed to credit all plaintiffs' payments
20 and full tender of the note.

21 In this case the plaintiff demonstrated the existence that
22 there is a reasonable likelihood of success with regards to
23 very serious questions. Unlike the case decided by Judge Whelan
24

1 a little over a month ago, Lyndon v. Countrywide Home Loans
2 (Docket number 08 - CV-0837) May 13, 2008, the plaintiff here
3 has both filed suit and sought relief prior to the occurrence of
4 the sale. Plaintiff was unable to proceed in a more timely
5 fashion due to health issues. It is respectfully requested that
6 the Court maintain the status quo until it can decide on the
7 primary issues of the accounting for the alleged debt and proof
8 of the holder in due course.
9

10
11 The public interest will be served by allowing plaintiff to
12 remain in control of the home, preventing her irreparable loss.
13 Public interest will not be disserved by issuing a temporary
14 restraining order to maintain the status quo until the issues
15 are adjudicated.

16 **THERE IS A HIGH PROBABILITY OF SUCCESS BASED ON STATUTORY**
17 **PROTECTION OF CONSUMER RIGHTS IN THE REAL ESTATE INDUSTRY.**

18 Underlying issues of alleged wrongful foreclosure are
19 troubling to the homeowner consumer and easily disregarded by
20 the lender defendant. Plaintiff relies on the separate sections
21 of the United States Code and state law regarding Fair Debt
22 Collection Practices Act. 12 USCA § 2605 (b). THE REAL ESTATE
23 SETTLEMENT PROCEDURES ACT.
24

25 In this case it is not known if defendant has any
26 significant or sufficient rights to initiate a non-judicial
27 foreclosure. **Nor has there been any validation of the debt by**
28

1 **the lender.** In fact there has been no audited accounting made
2 to plaintiff. If the status quo is not maintained, a greater
3 injury will be suffered by the plaintiff who will be displaced
4 and suffer more than any harm that might be suffered by the
5 defendant. This court is mandated to issue a stay to keep the
6 status quo until the standing to foreclose is determined by the
7 court.
8

9
10 One of the purposes of the real estate Settlement
11 Procedures Act was to protect borrowers and give them a tool by
12 which they could protect themselves beyond TILA requirements to
13 halt fraud and misrepresentation in the mortgage industry and to
14 halt preying on consumers. This is so serious an issue that
15 there is another clear mandate to issue a stay to maintain the
16 "status quo" pending a full adjudication.
17

18 2. **Interim Harm**

19 Irreparable Injury. The real property being wrongfully
20 foreclosed on is the home for plaintiff's retirement years. Real
21 property is unique and something for which no amount of monetary
22 damages will compensate. Plaintiff will lose her dream of a
23 retirement home.
24

25 **Harm is imminent.** Plaintiff is threatened with the
26 immediate loss of possession of her property by foreclosure.
27 Plaintiff seeks a determination whether the defendants have a
28

1 legal right to hold the foreclosure. To deny an equitable stay
2 of execution until there is actual proof that defendants and/or
3 his agents and successors have the right to the relief they seek
4 without a court review has extremely draconian and harsh
5 results.
6

7 In an abundance of caution and based upon legal and
8 equitable considerations, this Court should enter a Preliminary
9 Temporary Restraining Order to enjoin the foreclosure to
10 maintain the status quo and to allow Plaintiff and Defendants
11 to set forth their respective claims.
12

13 **Inadequacy of Remedy.** A home is an important unique
14 investment where one chooses to make his/her life, to build a
15 future, and is not replaceable. Plaintiff will suffer
16 **irreparable harm** in the loss of her home and cannot be
17 compensated for that loss. That substantial threat of
18 irreparable harm outweighs any potential harm to the other
19 parties.
20

21 **BALANCING** The issue underlying this suit is a foreclosure
22 of real property a remedy which should plaintiff be
23 unsuccessful, the real property will not be lost. It is
24 unlikely that defendants will be placed in much jeopardy, given
25 the current nature of the real estate market. They will
26 essentially suffer no damage at all. In contrast the home is
27 plaintiff's retirement home property. The wrongful foreclosure
28

1 will not maintain the status quo and inflict more damages to the
2 plaintiff prior to the adjudication of her TILA rights and other
3 damages. In addition her unoccupied home will be subject to
4 vandalism as well as most likely be resold and lost forever.
5

6 **Bond Requirements.**

7 The court has discretion to determine the imposition of bonding
8 requirements if, in the courts discretion such a bond is
9 necessary. Since the underlying issue is a foreclosure of real
10 property, the value of the real property remains even if
11 plaintiff is unsuccessful. In the current real estate market,
12 it is most unlikely that Defendants will be placed in much
13 greater jeopardy.

14 The court must take note that plaintiff has
15 justifiably requested the right for proof that there is
16 a right to actually legally hold the foreclosure. To
17 require a bond in these circumstances would have a
18 chilling effect to penalize the consumer for exercising
19 his/her protected statutory rights. Accordingly, it is
20 requested that no bond be required.
21

22 **2. STANDING TO PROCEED IN A NON JUDICIAL FORECLOSURE MUST**
23 **BE DETERMINED.**

24 **ISSUE WRONGFUL FORECLOSURE** Because most foreclosures
25 proceed without challenges from borrowers, few judges have
26 forced defendant creditors foreclosing on borrowers to show
27 proof of ownership. The troubling big issue is who really owns
28

1 the mortgage note, and allegedly what they illegally
2 securitized.

3 **ISSUE: STANDING TO BRING FORECLOSURE**. There has been no
4 determination of standing to execute a foreclosure sale. A
5 holder in due course must produce the original contract and the
6 original unaltered promissory note entitling them to proceed
7 against the homeowner's title and possession.
8

9 **ISSUES OF STANDING TO EXECUTE A FORECLOSURE SALE WERE NEVER**
10 **DETERMINED AND CONSTITUTE A FRAUD ON THE COURT.**
11

12 **ISSUE: FRAUD ON THE COURT.** Foreclosures take place in
13 courts of equity. Under the rules of evidence this court has
14 the responsibility to keep the status quo until it is determined
15 there is no fraud on the court. If foreclosing defendant is not
16 the holder in due course ("HIDC"), **the court is being told** that
17 they have a right to foreclosure when **they do not**. Plaintiff
18 objects to the non judicial foreclosure and requests a court
19 review.
20

21 The only one with foreclosure rights is the HIDC. To be
22 the HIDC you must have the original wet ink signature note. All
23 others are Holder for Value ("HFV") and have very limited
24 rights. The court must not determine or confirm a foreclosure
25 sale if:

- 26 (1) Title is misrepresented and/or there is no commercial
27 sale;
28 (2) The original, unaltered note is not produced;

1 (3) There is a holder in due course, not simply a holder
2 for value; and/or

3 (4) There is illegal securitization; and

4 (5) The contract terms were unconscionable and/or statutory
5 violations are determined by wrongful foreclosure sale
6 which was conducted fraudulently, or justice otherwise
7 was not done.

8 **FORECLOSURE REQUIRES THE ORIGINAL NOTE.**

9 Defendant's long standing practice of non judicial
10 foreclosure does not equate with legal compliance. Defendant
11 lender enforces its deception mandate where defendant alleges it
12 owns the promissory note and the original contract, but does
13 not. This court is compelled to stop defendants at the gate
14 and adjudicate the basic requirements prior to proceeding with
15 at foreclosure sale.
16

17 **NO EVIDENCE OF HOLDER IN DUE COURSE IN POSSESSION OF NOTE:**

18 There is no competent evidence before the court that (1) any
19 party is the holder of the alleged note or the true holder in
20 due course and (2) an audit accounting to prove that a certain
21 balance is due and owing on any alleged note.

22 Unequivocally Federal and state courts rule is that in order
23 to prove the "instrument" possession is mandatory.

24 **NO EVIDENCE OF AUDIT ACCOUNTING PROVING CLAIM OF DAMAGES.** In
25 addition, a necessary element of proof is: a claim of damages,
26 i.e. an accounting that is signed and dated by the person who is
27 responsible for the account incorporating the general ledger and
28

1 accounting. Of course, no tender can be submitted without an
2 audited correct accounting.

3 **NO EVIDENCE OF DOCUMENTATION OF OWNERSHIP.** Thus, more
4 compliance documentation of ownership is required from lenders
5 trying to foreclose. If the homeowner **does not object**, the
6 judge rubber-stamps the mortgage foreclosure that is being
7 pushed through the system.

8 In essence, Defendants provided no proven right or legal
9 authority to foreclose on plaintiff's real property. A copy of
10 the note does not suffice. Defendants' intentional
11 misrepresentation of their fraud on the consumer constitutes a
12 fraud on the court. The court must issue a stay to against
13 defendants until further order to enjoin them from taking any
14 action negatively affecting plaintiff.

15 THE DETERMINATION OF HOLDER IN DUE COURSE AND ACCOUNTING IS
16 TANTAMOUNT ISSUE REQUIRED TO QUIET TITLE DISPUTES AND COMPELS
17 THE ISSUANCE OF THE REQUESTED INJUNCTIVE RELIEF.

18 The compelling need to quiet title disputes provides a
19 separate basis for plaintiffs' claims and for her requested
20 emergency preliminary injunction. Based **solely** on the need to
21 quiet title and the relevant, egregious facts as set forth in
22 pleadings and plaintiff's declaration, she is more than likely
23 to succeed on the merits of her claims in particular due to
24 succeed on the merits of her claims in particular due to the
25 failure to respond to her inquiries to establish debt
26 verification, obtain an audit accounting, credit her tender and
27
28

1 payments, and determine the holder in due course of the original
2 contract and wet signature original promissory note.

3 Unquestionably, undisclosed information constitutes the
4 "actual or threatened misappropriation" of the PROPERTY that may
5 be enjoined. There is no proof of the identity of the holder in
6 due course who is entitled to proceed in a foreclosure sale.

7 **CONCLUSION**

8 Based on the foregoing and the application for emergency
9 restraining order , Plaintiff respectfully request that this
10 Honorable Court to issue a stay against defendants until further
11 order to enjoin them from taking any action negatively affecting
12 plaintiff.

13
14 Dated: August 1, 2008

15 Respectfully submitted,

16 *Rica C. Angelo 8/1/08*
17 Rica C. Angelo
18 Plaintiff in pro se
19
20

21 **DECLARATION OF RICA C. ANGELO**

22 I, RICA C. ANGELO: declare:

23 1. I am the plaintiff in the within matter. The facts
24 set forth herein are within my personal knowledge and, if called
25 upon to do so, I could and would competently testify thereto
26 under oath. This declaration is made in support of ex parte
27 application for injunctive stay of unlawful foreclosure, dated
28

1 for this week, of the subject property at 1970 Columbia Street,
2 #315, San Diego, California.

3 2. A complaint was filed for TILA damages. I intend to
4 amend the complaint to detail alternative claims of damages
5 stemming from deceptive fraud and unfair business trade
6 practices and other statutory violations .

7 3. Lender did not answer my questions although there were
8 many things that I did not understand. When I tried to verify
9 the debt and correct any documentation errors as set forth in my
10 filed complaint, my requests fell on deaf ears. My efforts were
11 not successful.

12 4. A wrongful foreclosure sale is set for August 1, 2008.
13 I respectfully request this court for an emergency order to stop
14 the foreclosure sale or my home property will be lost. There is
15 no other remedy to keep the status quo until the court hears the
16 issues of TILA and rescission and fraudulent lender activities
17 in my complaint.

18 I declare under penalty of perjury under the laws of the
19 United States that the foregoing is true and correct. Executed
20 on 1st day of August, 2008 at San Diego, California.

21
22 *Rica C. Angelo*
23 Rica C. Angelo
24 Plaintiff in pro se 8/1/08
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
Foregoing Application for Ex Parte Temporary Restraining Order/
Preliminary Injunction has been furnished to the following:
Defendant COUNTYWIDE BANK, at 2175 N. California Blvd., Suite
400, Walnut Creek California, 94596, by fax (817) 230-6868 and
U.S. mail, sufficient postage attached, this 1st day of August,
2008.

Rica C. Angelo
Rica C. Angelo 8/1/08